90-1914

Supreme Court, U.S.
FILED
MAY 20 1991
OFFICE OF THE CLERK

CASE NO. _____

SUPREME COURT OF THE UNITED STATES

FALL TERM 1990

* * *

LORENTZ OPDAHL;
THE APPALOOSA COMPANY
SIOUX ENTERPRISES-L.O.
(Now known as GRAND
TURKS ENTERPRISES)

Petitioners,

vs.

VON HOFF INTERNATIONAL, INC.
(formerly known as Tri-State
Refining Co., Inc.)

Respondent.

* * *

ON WRIT OF CERTIORARI

TO THE

SUPREME COURT OF THE UNITED STATES

FROM THE

SUPREME COURT OF SOUTH DAKOTA

* * *

PETITION FOR WRIT OF CERTIORARI

* * *

Lorentz Opdahl
RR 1, Box 216
Hudson, S. Dak. 57034
Ph. 605-984-2471

(a) THE QUESTION PRESENTED FOR REVIEW

Whether laws reducing or altering homestead exemption or any vested right or privilege are, so far as they relate to exemptions, rights and privileges previously acquired under The Homestead Act of 1862, unconstitutional, as impairing the obligation of contracts and violate the 5th and 14th Amendments' provision baring the deprivation of property without due process of law, by destroy the remedy in material respects?

RESTATED

Whether a state statutory provision reducing or altering a homestead exemption, a vested privilege, is within the federal prohibition of laws impairing the obligation of contracts, in so far as it relates to vested exemptions, rights and privileges acquired under laws of the United States existing before the state

statutory provision and gained as heir or assignee when such provision was contracted by the United States?

SPECIFIC RESTATEMENT

Whether South Dakota's statute SDCL 43-45-3 reducing or altering a homestead exemption from 160 acres down to $30,000, denominated in federal reserve note dollars is within the federal prohibition of laws impairing the obligation of contracts, in so far as it relates to vested rights and privileges acquired under The Homestead Act of 1862 and the patent issued to William L. Meiner in 1877 and later transfered to the Lorentz Opdahl, where such exemption provision was contracted by the United States?

(b) THE PARTIES

Respondent, Tri-State Refining & Investment Co., Inc., is the party in whose favor a Judgment rests against one of the Petitioners, Lorentz Opdahl, and would benefit from the judicial sale of the claimed homestead of 160 acres. Kenneth Albers is the sheriff of Lincoln County, South Dakota, where the rescheduled sale of the greater part of Petitioners' federal homestead would be held on May 28, 1991. 28 U.S.C., Section 2403(b) may be applicable. Therefore the question is presented to the Attorney General of the State of South Dakota for possible response and for notice of intent to file a claim. 28 U.S.C., Section 2403(a) may also be applicable. Therefore, the question is also served upon the Solicitor General, Department of Justice, Washington, D.C.

20530, to give opportunity to provide the contractual obligations required of the State of South Dakota upon enactment of Statehood, as it relates to the federal homestead.

The Appaloosa Company, the owner of the land of record before it was determined that Lorentz Opdahl owned the land, and Sioux Enterprises, both are unincorporated business organizations and are served for the record.

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Constitution of the United States:

Article I, Section 10 Pages 2,7,8,10,12,13,17

Article IV, Section 3, Paragraph 2 Page 13

Amendments V and XIV Pages 2,7,10,17,18,19

United States Statutes:

28 U.S.C. 1257(3) Page 1

28 U.S.C., Section 2403(a,b) Page iii

30 U.S.C., Section 122 Page 14

43 U.S.C., Section 161-175 (Repealed) Pages 2,7,8,11,14

Constitution of South Dakota State:

Article XXI, Section 4 Pages 2,7,9

State Statutes:

SDCL 43-31-1 Pages 3,8,11

SDCL 43-31-4, Pages 3

SDCL 43-45-3 Pages ii,3,4,6

Other Authorities:

The Homestead Act of 1862 (Appen. F)
Pages ii,2,6,7,11,14,15

Public Law 94-579 Pages 2,7,14

16A C.J.S., Constitutional Law, V. Vested Rights, Sect. 228ff
Pages 17,18

40 C.J.S., Homestead, Section 3,25, Page 9,15

5 S Ct D, Constitutional Law Section 180, page 358 Page 13

CERTIFICATE (Deed and Patent, Appendix G)
Pages ii,3,6,7,8,10,11,13,14,19

Cases:

Baldwin v. boyd
25 NW 580 (Neb. 1885) Page 16

Bouscher v. Smith
35 NW 681 (Iowa 1887) Page 16

In re Mauk, 56 B.R. 445, 447
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Smith v. Steele
12 NW 830 (Neb. 1882) Page 16

Speck v. Anderson,
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Stark Bros. v. Glaser
91 P. 1040 (Okla. 1907) Page 16

(d) OFFICIAL REPORTS

The supreme court of South Dakota entered a judgment (APPENDIX A) affirming the first circuit court (APPENDIX B), which had ordered the sale of the homestead belonging to this petitioner.

There was no findings of fact or conclusions of law precedent to the Order.

(e) STATEMENT OF GROUNDS OF JURISDICTION

The judgment was first entered in Circuit Court (South Dakota) on May 23, 1990, and, following appeal to the state supreme court, an affirmance was issued and entered on March 27, 1991. Petitioner believes that 28 U.S.C. 1257(3) confers on this Court jurisdiction to review the judgment in question. Even though the statute in final sentence, "For the purpose of this section, the term 'highest court of a State' includes the District of Columbia Court of Appeals", appears to limit origin of writs to one area (District of Columbia Court of Appeals), it is this petitioner's belief that this Court, or some Court here, may receive the question based on past consent and on the federal question involved, for which no direct decision has yet been made in any

appellant Court of the United States.

(f) LAW PROVISIONS INVOLVED

U.S. Constitution, Article I, Section 10--

"No State shall . . pass any . . Law impairing the Obligation of Contracts."

U.S. Constitution, Amendments V and XIV--

"No person shall . . be deprived of life, liberty or property, without due process of law"; " . . nor shall any State deprive any person of life, liberty, or property, without due process of law".

Homestead Act of 1862--Attached as Appendix F.

43 U.S.C. Section 175 (in effect till 1976)--

"No land acquired under the provisions of the homestead laws and laws supplemental and amendatory thereof shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor."

Public Law 94-579--

It (repeal of 30 U.S.C., Sections 161 through 291) should "not be construed as terminating any valid . . patent", see 43 U.S.C. Section 1701.

South Dakota Constitution, Article XXI, Section 4--

"The right of the Debtor to enjoy the comforts and necessaries of life shall be recognized by wholesome laws

exempting from forced sale a homestead, the value of which shall be limited and defined by law, to all heads of families, and a reasonable amount of personal property, the kind and value of which to be fixed by general laws."

SDCL 43-31-1--

"The homestead of every family, resident in this state, as hereinafter defined, so long as it continues to possess the character of a homestead is exempt from judicial sale, judgment lien, and from all mesne or final process from any court, to the extent and as provided in this code, . ."

SDCL 43-31-4--

" . . if not within a town plat, it must not embrace in the aggregate more than one hundred sixty acres."

SDCL 43-45-3--

Homestead absolutely exempt--Extent of exemption when homestead sold. A homestead: (1) As defined and limited in chapter 43-31, is absolutely exempt; or (2) In the event such homestead is sold under the provisions of chapter 21-19, or is sold by the owner voluntarily, the proceeds of such sale, not exceeding the sum of thirty thousand dollars, is absolutely exempt for a period of one year after the receipt of such proceeds by the owner."

Homestead, Deed and Patent to William L. Meiner--

" . . pursuant to the Act of Congress approved 20th May 1862, To secure Homesteads . . the claim of William L. Meiner has been established and duly consummated in conformity to law for

the South East Quarter of Section Twenty in Township Sixty-Six of Range Forty-Eight in the District of Lands subject to sale at Sioux Falls, South Dakota containing one hundred and sixty acres according to the Official Plat . . To have and to hold said tract of land with the appurtenances thereof unto the said William L. Meiner and to his heirs and assigns forever."

(g) STATEMENT OF THE CASE

Respondent Tri-State Refining & Investment Co., Inc., seeks sale of 159 of 160 acres determined to belong to Petitioner, and lives with wife Fern and son Tom. Notice of their homestead claims was filed, see Appendix C and D. The trial court had arbitarily converted the homestead to a personal property, under SDCL SDCL 43-45-3, with a "supposed" value of over $30,000. Only estimates in federal reserve notes were certified. No lawful money estimates were certified on the record. The acre

so marked off with a house on it, does not have it's own water supply, does not have it own electricity supply, and is generally setting in the middle of nowhere, with no true value to the Petitioner of $30,000 in lawful money of the United States, if and when it is separated from the 160 acres and the rest of the farm buildings. The intention of respondents is to imagine value at over $30,000, in an apparent so called "compliance" with alternate "homestead" personal property, when and if the homestead is converted to cash. The respondents do not actually plan on selling the so called "homestead" left-over for the Petitioners. There is only the "appearance" of not permitting any judicial process or forced sale on the "homestead" as they had defined it.

This Court should note that "the

proceeds" (intended for re-investing) is the personal property that is exempt under SDCL 43-45-3. However, pursuant to the scheme of respondents, there never will be any "proceeds" to hold exempt. Nowhere, in any Federal law, are "proceeds" ever considered to be a "homestead".

The supreme court of South Dakota has totally affirmed all such "actions" of the trial court and its agents, see supreme court ORDER DIRECTING ISSUANCE OF JUDGMENT OF AFFIRMANCE, Appendix A.

Petitioner had clearly stated that the Homestead Act of 1862 had put a particular character and property right on the 160 acres owned with wife Fern, when the United States granted first title and patent in 1877 to William L. Meiner and to "his heirs and assigns", and that the specific right to homestead on the total 160 acres was a

contractual right and that the sale of 159 acres of that homestead is a breach and impairment of that contract (patent), being committed by agents of the State of South Dakota and is a violation of property rights belonging to Petitioner, constitutionally and statutorily afforded by the laws of the United States and the laws of this State. The Sheriff sale would only be the final act that completes the damage against Petitioner.

The import of the federal law, the Homestead Act of 1862, and the Petitioner's reliance on them in the claim of homestead was clearly noticed into the record at hearing where the issue was decided. A copy of said statement is attached as Appendix E. Any reference to federal law was totally ignored and they made nothing of it. Further, no credence was given to SDCL

43-31-1 which is in total compliance with the contractual agreement made by the United States in the transfer of 1877 to Mr. Meiner. No finding of fact or conclusion of law was written for the purpose of basing the judgment on. The supreme court saw no need to explain where and how the federal question "is without merit on the ground that the issues on appeal are clearly controlled by settled South Dakota law or federal law binding upon the states." That same may be a fraud, once understood.

(j) BRIEF ARGUMENT TO HEAR WRIT

It is the duty of this court to counsel the courts and supreme courts of the various States in major and fundamental questions of law as they relate specifically to the United States Constitution and other specific laws of

the United States (past and present). The granting of homestead (understood here to mean 160 acres of land) has been a fundamental public policy, both federally and within the State of South Dakota. The "purpose is to provide a home for each citizen of the government, where his family may be sheltered and live beyond the reach of financial misfortune", Speck v. Anderson, 318 N.W. 2d 339 and 40 C.J.S., Homesteads paragraph 3, page 176. These laws are based on the theory that the preservation of the homestead is of greater importance than the payment of debts, and their purpose is to protect the family as a whole, and not merely the individual who for the time being is the head of the family, U.S.--In re Davis, D.C. Mich., 329 F. Supp. 1067.

Granted, that the Petitioner would not necessarily be put out in the street

immediately, but they could be so in due time, just as well, without their water supply, without their electricity supply, and without the opportunity to farm. Homestead is a unit of property, and not a severable indefinite dollar amount of "anticipated value". SDCL 43-35-1, creating homestead exemptions alternatives and reduces those formerly held, in order to be valid, must not violate any of the provisions of the federal Constitution, which, in this instance, it is: it impairs the contractual rights and privileges gained by Petitioners through the CERTIFICATE (Appendix H and D3-6) and violates prohibition of the taking property without the due process of law by destroying Petitioners' remedy in material respects, being a successor in interest and an assignee to William L. Meiner and the rights he possessed under

The Homestead Act of 1862.

The issue is more then just that "imaginary monetary value". The issue is the contractual interests that had become part and parcel to the land, whoever may ever own it, by virtue of the first CERTIFICATE (patent), and laws on which it was first based, granted from the United States, a contingent right with the land to all "heirs and assigns" of Mr. Meiner. The Petitioner is one of those assignees, who had claimed a 160 acre homestead for the record, after Tri-State obtained a judgment and Lorentz Opdahl was determined to be owner of the 160 acres in question here. State law (SDCL 43-31-1) and federal (43 U.S.C. 175, now repealed, but was in effect up to 1976 when homestead exemption was first contracted by the United States) bars any judicial process (including that planned for May 28, 1991) against that particular

160 acres identified as the Southeast Quarter of Section 20, Range 66, in Lincoln County, South Dakota.

The state trial court and the court of last resort in South Dakota have decided an important question of federal law which has not been, but should be, settled by this Court, and which decision appears to be in conflict with other applicable decisions of this Court and an impairment of existing contracts. Viewing the Supreme Court Digest, the essential issue--**Whether a state statutory provision reducing or altering a homestead exemption, a vested privilege, is within the federal prohibition of laws impairing the obligation of contracts, in so far as it relates to vested exemptions, rights and privileges acquired under laws of the United States existing before the state statutory prvision and gained as heir or**

assignee when such provision was contracted by the United States?--has not been an issue ever presented to this court. In 5 S Ct D, Constitutional Law, Section 180, page 358, this Court had determined that "Laws extending exemptions from attachment or execution are, so far as they relate to previously contracted debts, unconstitutional, as impairing the obligation of contracts, by destroy the remedy in material respects." Now it is time for this court to rule that the opposite effect is also true when exemptions are contracted and later the exemption laws are changed.

Congress had properly granted certain rights to entrymen and women, pursuant to the U.S. Constitution, Article IV, Section 3, paragraph 2--**"The Congress shall have Power to dispose of and make all needed Rules and Regulations respecting the Territory or other**

property belonging to the United States"--when it passed the Homestead Act of 1862 and the statute reflecting the same intents and purposes, 43 U.S.C. Sections 161-175 (now repealed, but with a saving provision regarding any valid patent then in existence that this repeal was not to construe any termination of such) and 30 U.S.C., Section 122.

When the General Land Office on the fourth day of June, in the year of Our Lord one thousand eight hundred and Seventy-Seven did issue to William L. Meiner, on behalf of the President of the United States of America, the Certificate (Appendix H), pursuant to the Act of Congress approved 20th May, 1862, this placed on that land certain character and gave to the entryman, William L. Meiner, certain homestead exemption privileges, which remained with the land as long as it transfers from and to assigns

"forever"--where the land is "occupied" by that same assignee. This occupation by Petitioner was clearly shown to and known of by all parties.

Consequently, based on the foregoing, "the homestead, after it has been properly declared, stands impregnable against every assault, and can be changed in character only by the voluntary act of claimant, and his wife, if married", 40 C.J.S., Homestead, paragraph 25, page 198. This Petitioner, nor his wife, has never changed, or desired to change the character of their homestead, consequently, their rights claim. Those rights mean in part: **exemption from any forced judicial sale for the payments of debts.**

The Homestead Act of 1862 created the right of the head of a family to claim up to 160 acres as a homestead property. If the land was used for home and basic

farming purposes and occupied for five consecutive years, the head of the family would be granted a patent on the land homesteaded. A federal land patent conveys fee simple ownership to the patentee, In re Mauk, 56 B. R. 445, 447 (Bkrtcy. N.D. Ohio 1985). As a general rule, the patent serves in the same capacity as a deed. The patent passed to heirs upon the death of the original patent holder and a purchaser could acquire the same rights as the original homesteader. Russell v. Lowth 21 Minn. 167, Smith v. Steele 12 NW 830 (Neb. 1882), Baldwin v. Boyd 25 NW 580 (Neb. 1885), Stark Bros. v. glaser 91 P. 1040 (Okla. 1907), Bouscher v. Smith 35 NW 681 (Iowa 1887). Such transfer occurred from Marian Ilene Jones and Paul I. Jones, Jean Caroline Majaj and Isa J. Majaj to Lorentz Opdahl (Petitioner here) and to wife Fern with family on July 21,

1970, Appendix F.

In view of all of the foregoing facts, now review 16A C.J.S., Constitutional Law, V. Vested Rights, beginning Section 228:

> "A right is vested when the right in enjoyment has become the property of some particular person or persons as a present interest . . must be immediate, absolute, complete, and unconditional, independent of a contingency", page 22.
>
> Vested rights can arise only from contracts, from statutes, and from operation of law", page 24.
>
> In Section 229, "Except in a legitimate exercise of the police power neither the federal government nor the states may impair or divest vested rights. The Fifth Amendment to the Constitution of the United States, which provides that no person shall be deprived of life, liberty or property without due process of law, secures the individual against any action of the federal government divesting vested rights, and the authority of Congress to alter, amend, or repeal an act is subject to the limitation that rights vested cannot be disturbed. Before the adoption of the Fourteenth Amendment, there was no prohibition in the Constitution of the United States which would prevent the states from passing laws divesting vested rights, unless these laws also impaired the obligation of contracts, or were ex

post facto laws; but vested property rights are now protected against state action by the provisions of the Fourteenth Amendment that no state shall deprive any person of life, liberty, or property without due process of law. Thus, it can be said that relevant constitutional restraints limit the state power to terminate an entitlement whether the entitlement is denominated a right or a privilege", page 25, 26.

"In order to fall within the constitutional prohibition against divestiture of vested rights, the law must create new obligations, impose new duties, or attach a new disability to the contract in existence when the law became effective (emphasis added), and interpretive legislation cannot properly be said to divest vested rights", page 27.

Section 236 reads, "Any right conferred by statute may be taken away by statute before it has become vested. But after a right has vested, repeal or amendment of the statute or ordinance which created the right does not and cannot affect such right", page 29,30.

Section 237 reads, "During the lifetime of the testator or intestate, his heirs, devisees, or legatees have no vested interest in his property. . . Where, however, on a person's death, the rights of his heirs, devisees, or legatees have thereby become vested, these rights may not be impaired by subsequent legislation", page 38.

This Court is asked to receive the

issue on the principle, that Petitioner does have all of the necessary contracts to claim all exemptions, rights and privileges that Mr. Meiner first had. Further, that the Petitioner had not in anyway signed away any of these rights by contract or conveyance, nor his wife, since it had been officially determined that the Petitioner is the owner of the land in question here.

This Writ should be allowed on grounds that this court should declare whether the State of South Dakota must respect the contractural interests that are represented in the patent. The State of South Dakota had acquired lands in 1889 from the United States, with the understanding that contracts currently in effect on the land would be honored, and specific exemptions, rights, and privileges, kept and reserved by the people (Petitioner being of the "We the

People"), should be honored by all Respondents. It behoves this court to finally so declare for certain, for the benefit of all who may lawfully exert the homestead exemptions similarily acquired.

Dated this 10 day of ~~May~~, 1991.

Jen

Lorentz Opsal

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

* * * *

TRI-STATE REFINING AND INVESTMENT COMPANY, INC. (now known as VON HOFF INTERNATIONAL, INC.),

Plaintiff and Appellee,

vs.

APALOOSA COMPANY, SIOUX ENTERPRISES-L.O., LORENTZ OPDAHL, an individual,

Defendants and Appellants.

ORDER DIRECTING ISSUANCE

OF JUDGMENT OF AFFIRMANCE

#17242

The Court having, pursuant to SDCL 15-26A-87.1(A), considered all of the briefs filed in the above-entitled matter, together with the appeal record, and having concluded that it is manifest on the face of the briefs and the record that the appeal is without merit on the ground that the issues on appeal are clearly controlled by settled South

Dakota law or federal law binding upon the states (SDCL 15-26A-87.1(A)(1)), now, therefore it is **ORDERED that a judgment affirming the Order of the lower court be entered forthwith.**

DATED at Pierre, South Dakota, this 27th day of March, 1991.

BY THE COURT:

ATTEST:
(Signed)

(Signed)
Robert A. Miller,
Chief Justice

Clerk of the Supreme Court
(SEAL)

APPENDIX A2

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) SS.
COUNTY OF LINCOLN) 1ST JUD. CIRCUIT

TRI-STATE REFINING AND INVESTMENT COMPANY, INC. (now known as VON HOFF INTERNATIONAL, INC.),

Plaintiff,

vs. CIV. NO. 84-30

APALOOSA COMPANY, SIOUX ENTERPRISES-L.O. and LORENTZ OPDAHL, an individual

Defendants.

ORDER ACCEPTING APPRAISEMENT AND DIRECTING SALE OF HOMESTEAD

The above captioned matter having come before this Court for hearing on Thursday, May 17, 1990, at 9:30 o'clock a.m., pursuant to Plaintiff's Motion for Acceptance of Appraisement (SDCL 21-19-24), dated May 2, 1990; Plaintiff appearing through its counsel, TERRY D. WIECZOREK, of ERICKSON, HELSPER & O'BRIEN, P.C., of Brookings, South Dakota, and Defendant and judgment debtor, LORENTZ OPDAHL, appearing personally and without counsel; and the

Court having reviewed and considered Plaintiff's Motion for Acceptance of Appraisement (SDCL 21-19-24) and the Court further recognizng that Defendant LORENTZ OPDAHL voluntarily left the courtroom during the course of the hearing, electing not to participate in the hearing; and the Court having heard and considered all evidence and testimony presented at the time of the hearing and Plaintiff's counsel's arguments in support of the Motion and being in all things duly advised, it is hereby **ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

1. That the appraisement of the three appraisers, one appointed by Plaintiff and two appointed by the Court, is hereby approved and accepted. Approval of said appraisement is based upon the following findings: a. The appraisement was done in accordance with statutes; b. The parties making said appraisement are

competent to determine the fair market value of the property in question; c. All aspects of the real estate market in existence at the time of said appraisement were considered by the appraisers in forming their opinion as to the fair market value of the subject real estate; d. The real estate described as the Southeast Quarter (SE 1/4) of Section Twenty (20), Township Ninety-Six (96), Range Forty-Eight (48), Lincoln County, South Dakota has a fair market value of $162,000. The tillable crop land within the described real estate has a value of $800.00 per acre. The value of the building site situated upon the described real property including approximately ten acres has a value of $42,000. The house situated on the building site within the described real property, with approximately one acre of land, has a value of approximately $34,000.

2. That the net value of the debtor's homestead is more than the homestead exemption and it is feasible to divide the homestead so that the debtor retains his full homestead exemption as provided by law.

3. That there is hereby set aside to Defendant and judgment debtor LORENTZ OPDAHL and his family a homestead which will consist of the dwelling house and approximately one acre of surrounding land located upon the real property described as the Southeast Quarter (SE 1/4) of Section Twenty (20), Township NInety-Six (96), Range Forty-Eight (48), Lincoln County, South Dakota.

4. That Plaintiff shall cause a survey to be made of an area encompassing the above described property set aside as the debtor's homestead.

5. That a sale of the existing homestead be had in accordance with SDCL

21-19-29, and the general execution sale statutes, and further pursuant to a Writ of Execution issued by the Lincoln County Sheriff's Office on January 10, 1990, and Levy effected upon the described real property by the Lincoln County Sheriff on February 13, 1990.

6. That the sale of the homestead not be had for sixty (60) days from the date notice of the entry of this Order is given, unless waived by the debtor, and that at any time prior to the sale of the homestead the debtor may, at his option, pay to the Sheriff of Lincoln County the surplus of the appraised value of said homestead over and above the homestead exemption plus all encumbrances.

Dated this 23rd day of May, 1990.

BY THE COURT:

ATTEST:

(Signed)
(Sigvor Overby) E. W. Hertz
Clerk of Courts Circuit Court Judge
(SEAL)

HOMESTEAD CLAIM

The undersigned, **Lorentz and Fern Opdahl**, hereby give notice that the following described real property: **Southeast Quarter (SE¼) of Section Twenty 20, Township Ninety-Six (96), Range Forty-Eight (48), in Lincoln County, South Dakota** is claimed as **HOMESTEAD**, a substantive right, and pursuant to SDCL 43-31-6 to 8, the description is certified and acknowledged by the above owners, and shall be recorded by the Register of Deeds of Lincoln County in a book to be called the "Homestead book". SDCL 43-31-1 shall apply to this **HOMESTEAD**.

DISCLAIMER: This claim is not made to impair any contracts or obligtions thereto. The claim is only made because of the Court's determination that the property belongs to Lorentz Opdahl, falsely so determined. Liability and

responsibility for any law that impairs any contract shall belong to the State of South Dakota.

Dated this 15th day of Janury, 1990.

(Signed) (Signed)
Lorentz Opdahl Fern Opdahl

SUBSCRIBED AND AFFIRMED to before me on this 15th day of January, 1990.

(Signed) Hatenet C. Nelson

STATE OF SOUTH DAKOTA: County of Lincoln)SS filed for record this day 15th of Jan A.D. 1990 at 9:00 o'clock AM and duly recorded in Book A of Homestead Records on page 112 Fee $3.00 pd by Kathereen Hiel REGISTER OF DEEDS return to Lorentz Opdahl, Rt. 1, Box 216, Hudson, SD57034

STATE OF SOUTH DAKOTA: County of Lincoln)SS filed for record this day 3rd of April A.D. 1990 at 12:10 o'clock P.M. and duly recorded in Book A of Homesteads on page 113 Fee $7.00 pd by Kathereen Hiel REGISTER OF DEEDS return to Fern Opdahl

AFFIDAVIT

STATE OF SOUTH DAKOTA

COUNTY LINCOLN

Comes now the undersigned, Fern Muth Opdahl of lawfull age and living at Hudson in the County of Lincoln and the State of South Dakota, and being first sworn and under oath, deposes and states as follows, EXPRESS THE INTENTION TO CLAIM, AS MY HOMESTEAD, (Federal Homestead) Application #5771, Certificate #1693 of the United States of America deposited in the General Land Office of the United States a certificate of the register of the land office at Sioux Falls, Dakota Territory, Act of Congress

May 20th, 1862, to secure homesteads; the Southeast Quarter of Section Twenty in Township Ninety-Six of Range 48 forty-eight in the District Land, West of the 5th P.M. one hundred and Sixty Acres--President R.R. Hayes 4th day of June 1877 (year of Jesus Christ) U.S. Patent William L. Miner (heir and assignees forever) The Southeast Quarter (SE¼) of Section Twenty (20) Township (96) range 48, Lincoln County, South Dakota (160 acres) Federal Exemption laws SDCL 43-31-1 THIS AFFIDAVIT IS GIVEN IN ORDER THAT THE TRUTH BE KNOWN AND THIS IS SWORN TO BE TRUE AND CORRECT, TO THE BEST OF MY KNOWLEDGE. (Signed) Fern Muth Opdahl. SUBSCRIBED AND SWORN TO, BEFORE ME, A NOTARY PUBLIC, AND FOR THE COUNTY AND STATE NOTED ABOVE WRITTEN ON THIS 3rd DAY OF April, 1990. (YEAR OF JESUS CHRIST). (Signed) Doris Debondt NOTARY PUBLIC Lincoln Co. SD Comm Expires

8-10-96.

United States to William L. Meiner filed for record March 16th AD 1877 at 4:30 o'clock p.m. Thorn Jes Thorstad Register of Deeds Final receivers Receipt No. 1693 Application No. 5771 **HOMESTEAD** Receivers Office Sioux Falls March 16, 1877 Received of William L. Miner the sum of four dollars---cents being the balance of payment required by law for the entry of South East Quarter of Section 20 in Township 96 of Range 48 containing 160 acres, under Section 2305 of the Revised Statutes of the United States. J. W. Washburn, Receiver $4.00. Filed for record, March 16th A.D. 1877 at 4:20 o'clock P.M. recorded in Book ? of Deeds on page 546. Thorn J. Thorstad, Register of Deeds.

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COM

Homestead Certificate No. 1693,

Application 5771) Whereas, there has been deposited in the GENERAL LAND OFFICE of the United States a CERTIFICATE of the Register of the Land Office at Sioux Falls, Dakota Territory, whereby it appears that, pursuant to the Act of Congress approved 20th May, 1862, "To secure Homesteads to actual settlers on the public domain," and the acts supplemental thereto, the claim of William L. Meiner has been established and duly consummated in conformity to law for the South East Quarter of Section Twenty in Township Ninety Six of Range forty-eight, in the District of Lincoln subject to sale at Sioux Falls, Dakota Territory, containing one hundred and Sixty acres, according to the Official Plat of the Survey of the said Land docketed to the GENERAL LAND OFFICE by the SURVEYOR GENERAL.

Now know ye, that there is therefore

granted by the United States, unto the said William L. Meiner the tract of land above described: **TO HAVE AND TO HOLD** the said tract of Land, with the appurtenances thereof, unto the said William L. Meiner and to his heirs and assigns forever.

IN TESTIMONY WHEREOF, Rutherford B. Hayes, PRESIDENT OF THE UNITED STATES OF AMERICA, have caused these letters to be made Patent, and the SEAL OF THE GENERAL LAND OFFICE to be hereunto affixed. Given under my hand, at the CITY OF WASHINGTON, the Fourth day of June, in the year of **Our Lord** one thousand eight hundred and Seventy-Seven, and of the Independence of the United States the one hundred and first. By the President: (signed) R. B. Hayes by B. L. Lang, Asst, Sec'y. (Signed) S. W. Clark, Recorder of the General Land Office. Recorded V. 4, Page 130, Territory of Dakota, County of

Lincoln, filed for record the 10th day of September 1887 at 4 o'clock P.M. and duly recorded in Book ? of Deeds on page 291. A.H. Jacobson, Reg. of Deeds, by Gua Olson, Deputy.

STATE OF SOUTH DAKOTA)

COUNTY OF LINCOLN) SS

TRI-STATE REFINERY CO., Civ. 84-30

Plaintiff,

vs.

APPALOOSA CO., Sioux Enterprises, and LORENTZ OPDAHL,

Defendants;

NOTICE OF DEMAND FOR JURY TRIAL (AT LAW) ANSWER TO (1) PLAINTIFF'S RESPONSE TO DEMAND FOR DISMISSAL, (2) NOTICE OF HEARING, (3) ACCEPTANCE OF APPRAISEMENT (4) EXPUNGEMENT OF RECORD AND (5) SHERIFF TO DISGARD 3RD PARTY CLAIM; AND PERSONAL LETTER TO JUDGE HERTZ. AFFIDAVIT AND CERTIFICATE OF SERVICE

Affidavit: Comes now, Lorentz Opdahl, defendant, and Homesteader under all rights of the Homestead Act of 1862, U.S.C. 43-(161 thru 291) and SDCL 43-31-1.

Response to (1) my wife and I are not

claiming 160 acres, per person, as plaintiff states, only our equal share of 160 acres of our Homestead Rights. My son Tom Opdahl has filed on 2 separate 80 acres; one which belongs to him and his sisters, the other land as my heir; I have given to him, to claim as, 80 acres Homestead, and this is my right, as he is my heir and he lives on the home place and that's his privilege but as a person single, 21 years of age, a citizen of the State of South Dakota and United States of America he can declare his homestead rights as long as it isn't over 160 acres (applying to the Homestead Act of 1862 and U.S. Codes 43-161 thru 175) but futher public (lands) laws, state-entitlment to be applied more than 160 acres, timber land, etc., as long as it's contigories (N58 Rod E 40 Rod N87½ Rod NE¼ Sec. 29, township 96, Range 48, 80 acres) I have never been an owner to

the 80 acres (S½SW¼) Sec. Twenty (20) Township Ninety Six (96) range forty-eight (48), Lincoln County, S.D. (See attached) contract for deed to Ophdahl children, which shows it belongs to the Opdahl children and Thomas has his rights to claim homestead rights, to both 80 acres.

SDCL 21-19 leg. (State Legislature) cannot take jurisdiction over the Homestead Act of 1862 or Homestead Rights of U.S.C. 43-161 thru 291 and 43-31-1. Homestead is exempt from judgment liens, judicial sale, and from all mesne or final process from any court. . . Wherefore, for all the suffering, pain, embarrassment, ridicule, expense and degrading of my character by exposing me up to public knowledge and degrading my property good name of my property as well as my family and myself, I'm asking two hundred thousand ($200,000) dollars;

removal of the "cloud of title" on our Homesteads!

Therefore, I demand a jury trial, according to the U.S. Constitution (Amendment) Article (7) seven (in Part) suits at common law, a right to trial by a jury S.D. Constitution (in part) right of trial, by jury--at law-- Article (6) six.

Dated this 14 day of May, 1990, (year of Jesus Christ)

(Signed) Lorentz Opdahl
Rural Route
Hudson, S. Dak.

Filed 5-14-90 Sigvor Overby Clerk of Courts

Certificate of Service

I hereby certify that a true and correct copies sent to plaintiff's attorney, Terry Wieczorek.

STATE OF SOUTH DAKOTA) In Circuit Court
County of Lincoln)SS 1st Judicial Cir.

Tri-State Refining Co. Civ. 84-30

Plaintiff,

vs.

Apaloosa Co., Sioux Enterprises
Lorentz Opdahl,

Defendants;

NOTICE OF DEMAND FOR JURY TRIAL (at law), AFFIDAVIT AND CERTIFICATE OF & NOTARY PUBLIC

Affidavit: Comes now, Fern Opdahl, and states that I claim of homestead rights under the federal Homestead Act of 1862, US. Code 43-161 thru 175, and SDCL 43-31-1, still apply to me as I'm over 21 years of age, a citizen of the United States of America and of the State of South Dakota SDCL 43-31-1 (total exemption from all courts).

The 1862 Homestead Act--Patent--states every rights of the Act, applies to heirs and assigns <u>forever</u> and the U.S. Constitution (Article I, Section 9, Clause 3) states no expost facto law

shall be passed. No expost facto law, because of the whims of a state legislature, many years later, can chanage the 1862 Act, which applies to me, the Homestead, and wife of Lorentz Opdahl, because I am 21 years of age an a citizen of this country. U.S.C. 43, Sections 161 thru 175, still applies to me, even though, Public Law 94-579 repealed 43 U.S.C. Sec. 161 thru 291, effective Oct 21, 1976. The saving provision states that it should not be construed to terminate any valid patent. (43 USC Section 1701) which means the same as the U.S. Constitution say no ex-post facto law shall be passed; I can claim my share up to 160 acres.

Wherefore, for all the pain and suffering, ridicule and embarrassment, the degrading of my character and my (homestead) property to the public, for all to know, I'm asking for one hundred

thousand dollars ($100,000) dollars and removal of the (cloud of title) placed by plaintiff, on my share of rights to a Homestead.

Therefore, I demand a jury trial, according to U.S. Constitution, ammendment (Article Seven (7), (in part)--suits at common law, a right of trial by a jury, and S.D. Constitution, (in part) right of trial by jury--at law-Article Six (6).

Dated this 4 day of May, 1990 (year of Jesus Christ)

(Signed) Fern Opdahl
Rural Route
Hudson, S. Dakota.

Subscribed and sworn to, before me, a notary public, and for the county and state as above written on this 14th day of May 1990 (year of Jesus Christ)

(signed) Kathleen Hill

Seal Notary Public

Commission expires

APPENDIX E7

STATE OF SOUTH DAKOTA) In Circuit Court

County of Lincoln) SS First Jud. Cir.

Tri-State Refinery Co. and Robert Hoff
Plaintiff,

Civil #84-30

vs.

Appaloosa Co, Sioux Enterprises and Lorentz Opdahl,
Defendants,

ANSWER TO MOTION FOR EXPUNGEMENT OF RECORD, AFFIDAVIT, CERTIFICATE OF SERVICE AND CORRECTION

Affidavit: Comes, now, Lorentz Opdahl, and stats as follows: The motion filed by Plaintiff's attorney, on expungement of records, to direct court to require the register of deeds to remove certain claims, filed against the real property, of the property in question, doesn't have the right to ask the Courts to remove claims unless the plaintiff files suit against the Register of Deeds; and prove the register of deeds

were wrong in accepting the claims. Which plaintiff attorney hasn't done--filed negligence charges against recorder.

Defendant and heirs filed a Homestead right on the properties in question. Which is our Rights. These rights are preemptory. Plaintiffs attorney states, "for homestead rights you must be the head of the family, it says" or who has arrived at the age of 21 years and is citizen of the United States of America, this is according to the Homestead Act of 1862, and is forever, for heirs and assigns, and not to be sold only to heirs and devisee. This law applies to my family and myself as it applies to all public land given between 1862 and 1891, in which the Homestead law was repealed, but it covers a large portion of land, in these United States. (including our property hmesteaded and patented by

William L. Miner, signed by President Hayes and Paul Pederson, signed by President Arthur) forever. Other laws have carried on with this law.

So, according to those laws and even SDCL 43-28-2 the following may be recorded. (2) patents to real estate from U.S. and final certificates, etc. and (6) as provided by SDCL 43-28-4.1--married or single person, register of deed is to record Affidavit, claims of homestead rights (43-28-1) affecting the title to or possession of real property. SDCL 43-31-8 says the description of the homestead certified and acknowledged by the owner, shall be recorded by the register of deeds of the proper county (Lincoln) in a book to be called the "homestead book", which shall be provided with a proper index. How much clearer can the law be that the register of deed shall record a homestead

claim, and that is just actually what was claimed and recorded by my family and myself, according to 43-31-7 my family and myself have had our homestead platted, years ago, showing this in our homestead claims.

Again I repeat my wife has her rights to real and personal property, S. Dak. Constitution Article XXI, Section 5 (five). In part--states she may after marriage become in any manner rightfully entitled, shall be her separate property, and shall not be liable, for the debts of her husband. She has her right to claim her home as her homestead (her portion and again can't be touched by any court. SDCL 43-31-14 defines family too. Plaintiff also argues <u>without</u> <u>proof</u> that defendant is owner of real property Fern Opdahl claims her portion is baseless in law and fact and Thomas Opdahl hasn't filed papers in Reguster of Deeds, this

has already been answered a (single person) (21 years) and Fern Opdahl, if the courts could sell her homestead, she would be homeless and she hasn't been found guilty of anything but being the wife of defendant, for over forty years and this can't be done. SDCL 25-2-7 says--each spouse shall have and retain after marriage all the civil and property rights of a single person. Each may buy and sell, receive and convey, or dispose of by will, or otherwise dispose of any real or personal property belonging to him or her or in which he or she may have an interest, without joining, the name of the spouse <u>except the homestead SDCL 44-9-5</u>. Maybe it would be well that attorney for the plaintiff, would due his home work, instead of expecting the court to just give him, everything he asks for; without any law or fact.

Dated this 17 day of May, 1990, (year

o

of Jesus Christ)

Signed (Lorentz Opdahl)
Hudson, South Dakota

Seal: Subscribed & sworn before me a notary public for the above county & state.

Dated this 17th day of May, 1990, (year of Jesus Christ)

(Signed) John L Frislie
John L. FRISLIE,
Notary Public
My commisssion Expires

May 9, 1993

APPENDIX E13

WARRANTY DEED--State form

Jean Caroline Majaj and Isa J. Majaj, husband and wife, grantors, of Sioux County, State of Iowa for and in consideration of one and more DOLLARS GRANT, CONVEY AND WARRANT to Lorentz Opdahl, grantee, of Hawarden, Iowa P. O. Box the following described real estate in the County of Lincoln in the State of South Dakota: **The Southeast Quarter (SE¼) of Section Twenty (20) and the North fifty-eight (58) rods of the East Forty (40) rods and the North Eighty-seven and One-third (87 1/3) rods of the West One Hundred Twenty (120) rods of the Northeast Quarter (NE¼) of Section Twenty-nine (29), all in Township Ninety-six (96), Range forty-eight (48), consisting of 240 acres, more or less.**

Dated this 21st day of July, 1970.

(signed)
Jean Caroline Majaj

APPENDIX F1

(signed)
Isa J. Majaj

TRANSFER FEE PAID

STATE OF IOWA)

COUNTY OF SIOUX) SS

On this the 22nd dy of October 1970, before me, E. V. slife, Jr. the undersigned officer, personally appeared Jean Caroline Majaj and Isa J. Majaj, satisfactorily proven to be the persons named subscribed to the within document acknowledged that they executed the same for the purposes therein contained. I herewith set my hand and official seal. (signed) E. V. Slife, Jr., Notary Public. My Commission Expires July 4, 1972

APPENDIX F2

May 20, 1962 Chap. LXXV--An Act to secure Homesteads to actual Settlers on the Public Domain.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that any person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who shall have filed his declaration of intention to become such . . be entitled to enter one quarter section or a less quantity of unappropriated public lands, upon which said person may have filed a pre-emption claim . . that such entry is made for the purpose of actual settlement and cultivation . . the right and fee shall enure to the benefit of said infant child or children . . sell said land for the benefit of said infants, but for no other purpose; and the purchaser shall acquire

the absolute title by the purchase, and be entitled to a patent from the United States, on payment of the office fees and some of money herein specified. . . That no lands acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor. . .

Approved, May 20, 1862.

APPENDIX G2

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COM

Homestead Certificate No. 1693,

Application 5771) Whereas, there has been deposited in the GENERAL LAND OFFICE of the United States a CERTIFICATE of the Register of the Land Office at Sioux Falls, Dakota Territory, whereby it appears that, pursuant to the Act of Congress approved 20th May, 1862, "To secure Homesteads to actual settlers on the public domain," and the acts supplemental thereto, the claim of William L. Meiner has been established and duly consummated in conformity to law for the South East Quarter of Section Twenty in Township Ninety Six of Range forty-eight, in the District of Lincoln subject to sale at Sioux Falls, Dakota Territory, containing one hundred and Sixty acres, according to the Official

Plat of the Survey of the said Land docketed to the GENERAL LAND OFFICE by the SURVEYOR GENERAL.

Now know ye, that there is therefore granted by the United States, unto the said William L. Meiner the tract of land above described: TO HAVE AND TO HOLD the said tract of Land, with the appurtenances thereof, unto the said William L. Meiner and to his heirs and assigns forever.

IN TESTIMONY WHEREOF, Rutherford B. Hayes, PRESIDENT OF THE UNITED STATES OF AMERICA, have caused these letters to be made Patent, and the SEAL OF THE GENERAL LAND OFFICE to be hereunto affixed. Given under my hand, at the CITY OF WASHINGTON, the Fourth day of June, in the year of Our Lord one thousand eight hundred and Seventy-Seven, and of the Independence of the United States the one

hundred and first. By the President: (signed) R. B. Hayes by B. L. Lang, Asst, Sec'y. (Signed) S. W. Clark, Recorder of the General Land Office. Recorded V. 4, Page 130, Territory of Dakota, County of Lincoln, filed for record the 10th day of September 1887 at 4 o'clock P.M. and duly recorded in Book ? of Deeds on page 291. A.H. Jacobson, Reg. of Deeds, by Gua Olson, Deputy.